Thus, suppose a man occasionally did such a piece of work as digging a well or laying a stone wall, this not being his usual business; when you find that he could to some extent do all the usual work to which he was accustomed, his right to recover ceases, although you may find him unable to dig a well or lay a wall.

The jury found for the plaintiff.

NOTES OF RECENT BANKRUPTCY DECISIONS.[1]

I. JURISDICTION.

Where there is no conflict of jurisdiction between the officers of the state courts and Court of Bankruptcy, the latter will not interfere with its summary process to prevent such conflict: *Re Davidson*, East. Dist. N. Y., 2 B. R. 49.

District of Bankrupt's carrying on Business.—Where a bankrupt had been a member of a manufacturing firm in New Jersey, which failed and stopped business, and while continuing to reside in New Jersey, had an office in New York, where he received and wrote letters, and was settling up the business of the firm: *Held*, that he was not carrying on business in New York within the meaning of the statute, and discharge must be refused for want of jurisdiction: *Re Little*, So. Dist. N. Y., 2 B. R. 97.

Injunction to stay Proceedings in another Court.—A District Court has no power to grant an injunction to stay proceedings in another court by reason of bankruptcy proceedings pending in another state and before another court. Such power belongs to the court in which the proceedings are pending: *In re Richardson and Richardson*, So. Dist. N. Y., 2 B. R. 74.

Discharge of Bankrupt from Arrest on Process from State Court.—A judgment-creditor proved the debt in bankruptcy, which was shown by the record of proceedings in the state courts to have been created in fraud. The District Court refused to discharge the bankrupt from arrest and bail, and refused to direct satisfaction of the judgment. Petition to have decision of the District Court reviewed denied with costs: *Re Robinson*, So. Dist. N. Y. 2 B. R. 108.

Bankrupt—Breach of Trust—Liability to Arrest.—A bankrupt is not liable to arrest, pending proceedings in bankruptcy, upon a claim that would be discharged by an adjudication of bankruptcy. Where goods were sent to bankrupt to be sold on commission, and bankrupt, after selling, refused to account, *held*, that the debt being created by

[1] We are indebted for these notes to the Bankrupt Register.—EDS. AM. LAW REG.

defalcation of bankrupt while acting in a fiduciary relation was unaffected by discharge: *Re Kimball*, So. Dist. N. Y., 2 B. R. 74.

II. Acts of Bankruptcy.

Assignment by Insolvent.—An assignment by an insolvent of all his property for the benefit of preferred creditors is an act of bankruptcy. Where property of an insolvent was assigned to creditors with fraudulent preference, *Held*, in an action brought by assignee in bankruptcy to recover said property, that the value of property exempt from execution must be deducted, and judgment entered up for remainder: *Grow* v. *Ballard*, Dist. of California, 2 B. R. 69.

Suspension of Payment.—Suspension of payment of commercial paper fourteen days by a merchant, is *primâ facie* evidence of fraud, and casts the burden of proof on the alleged bankrupt; and being unexplained, decree of bankruptcy adjudged on petition of creditors: *Re Ballard & Parsons*, Dist. of Connecticut, 2 B. R. 84.

The non-payment at maturity of promissory notes that are not commercial paper, is no ground for an adjudication of the debtors as bankrupts on a petition by a creditor in involuntary bankruptcy: *Re Lowenstein*, So. Dist. N. Y., 2 B. R. 99.

III. Effect of the Institution of Proceedings.

Property of Bankrupt after Petition filed.—The property of bankrupt after filing his petition is not liable to be taken on execution, and the court will prevent such interference by injunction. Proceedings in bankruptcy are in the nature of equity proceedings: *Re Wallace*, Dist. of Oregon, 2 B. R. 52.

Exempted Property.—Property of the bankrupt, exempt both by the state law and Bankrupt Law from levy and sale, cannot be sold after he has filed his petition in bankruptcy, although then levied on by United States marshal: *Re Griffin*, So. Dist. Georgia, 2 B. R. 85.

Attachment in State Court—Lien of Attaching Creditor.—Where an attachment is dissolved by the commencement of proceedings in bankruptcy, the title of the property attached vests in the assignee, but subject to all subsisting liens then existing on the property. Where the proceedings of the sheriff under an attachment up to the commencement of proceedings in bankruptcy were regular and valid, he has a lien on the property for his fees which accrued prior to such commencement, but to no greater extent: *Re Housberger and Zibelin*, So. Dist. N. Y., 2 B. R. 33.

Lien Creditor.—A vendor's equitable lien will be upheld by Court of Bankruptcy: *Re Perdue*, Nor. Dist. Georgia, 2 B. R. 67.

Levy by Judgment-Creditors—Lien protected.—Creditors holding judgment may order execution to issue and levy upon and sell the property of their debtor, and the Bankrupt Law will protect them in the advantage thus secured, although they may have had, at the time of ordering the execution, doubts as to the solvency of the debtor: *Re Kerr*, West. Dist. Mo., 2 B. R. 124.

Powers of Bankrupt.—Bankrupts, before the appointment of the assignee, stand in a fiduciary relation to the estate, and cannot be purchasers: *March* v. *Heaton*, Dist. of Mass., 2 B. R. 66.

Feme Covert.—A feme covert engaging in trade must do so in accordance with the statute of the state. Not having done so, and being incapacitated to make contracts, she may avail herself of her coverture to defeat debts in bankruptcy: *Re Slichter*, Dist. of Minnesota, 2 B. R. 107.

Debt of Petitioning Creditor.—While an adjudication in bankruptcy stands unrevoked, all inquiry into the validity of the debt of the petitioning creditor in the involuntary proceedings is precluded: *Re Fallon*, So. Dist. N. Y., 2 B. R. 92.

IV. Practice.

Original Papers—Leave to Withdraw.—Original papers referred to in bankrupt's deposition, and annexed thereto, cannot be withdrawn from the files at the option of the bankrupt. The court may order a withdrawal for good reason shown by party interested: *Re McNair*, Dist. of North Carolina, 2 B. R. 109.

Creditor asking to be paid should do so by Petition.—A creditor may petition the court for relief, to be paid a judgment against the bankrupt, out of moneys in the hands of the assignee in bankruptcy, but the proper way to bring the creditor into the case is by petition, and not by motion: *Re Smith*, So. Dist. N. Y., 2 B. R. 98.

Omission to publish Notice of Meeting.—An omission to publish notice of the first meeting of creditors to prove their debts in one of the papers designated for that purpose, also a failure to state in the warrant the names, residences, and amounts of the debts of creditors, and the false return of messenger, are sufficient irregularities to set aside the proceedings before had: *Re Hall*, Nor. Dist. N. Y., 2 B. R. 68.

Partnership—Petition of one Partner to adjudicate the Firm Bankrupt.—Two or more partners may be adjudged bankrupts upon the petition of one or more of them. A mere formal dissolution of the partnership while there are assets, &c., will not prevent the operation of the act upon the partners, either in a voluntary or involuntary case. A suit brought for fraudulently recommending a person as worthy of trust and confidence, is not a claim within the 14th section of the act which passes as assets to the assignee: *Re Crockett and others*, So. Dist. N. Y., 2 B. R. 75.

V. Examination of Bankrupt.

Application by Assignee.—It is not necessary that the application of assignee for the appearance of bankrupt should be under oath. A bankrupt may be called upon at any time to submit to an examination, and as the assignee is a *quasi* officer of the court, it is only necessary that the court should be satisfied of the *bonâ fides* of his application: *Re McBrien*, So. Dist. N. Y., 2 B. R. 73.

When Order made by Court.—Order for examination of bankrupt always made by court on petition for final discharge. Any other exami-

nation must be ordered on petition of assignee or creditors: *Re Brandt*, Dist. of North Carolina, 2 B. R. 109.

Application by Creditor.—A creditor to obtain an order according to Form 45 for an examination of the bankrupt under sect. 26, must apply for such order by petition or affidavit, and show good cause for granting the same: *Re Adams*, So. Dist. N. Y., 2 B. R. 33.

Regulation of.—Each creditor has the right to examine the bankrupt under section 26 of the act, but such examinations are to be regulated as to time, manner, and course by the register in the exercise of a sound discretion: *Re Adams*, So. Dist. N. Y., 2 B. R. 92.

Questions to Bankrupt.—A bankrupt must answer questions in relation to property in which it is shown that he might possibly have an interest: *Re Bonesteel*, So. Dist. N. Y., 2 B. R. 106.

VI. Of the Discharge.

Application for, within One Year.—Bankrupt must make application for discharge within one year from the date of adjudication in bankruptcy: *Re Willmott*, Nor. Dist. N. Y., 2 B. R. 76.

Under section 29, it is only in cases where the bankrupt can apply for his discharge within less than six months from his adjudication that he must do so within a year therefrom in order to obtain a discharge: *Re Greenfield*, So. Dist. N. Y., 2 B. R. 100.

Omission of Creditor's Name from Schedule.—The omission of the names of creditors on the schedule, with the knowledge and consent of those creditors, is not such a wilful and fraudulent omission as to prevent a discharge of the bankrupt, upon the objection of other creditors: *Re Needham*, Dist. of Mass., 2 B. R. 124.

False Oath as to Assets.—Where the wife of the bankrupt had with her own money bought out the interest of a retiring member of an insurance broker's firm, which employed the bankrupt ostensibly as clerk, at a percentage of profits in lieu of salary, and the shares of the wife and the bankrupt did not exceed the fair remuneration of the bankrupt for his services to the firm, which he was mainly instrumental in building up and conducting, and the annual profits whereof were $35,000.

Held, that the bankrupt was virtually a partner, and swore falsely that he had no assets. Discharge refused: *Re Rathbone*, So. Dist. N. Y., 2 B. R. 89.

Concealment of Effects.—Where a specification in opposition to the discharge of a bankrupt is that the bankrupt has concealed his effects, or that he has sworn falsely in his affidavit annexed to his inventory of debts, it must be shown that the acts were intentional in order to preclude a discharge: *Re Wyatt*, Dist. of Kentucky, 2 B. R. 94.

Concealment of Property.—Where specifications in opposition to the discharge of the bankrupt set forth that he had concealed property in the hands of his brother, from which badges and indicia of fraud were deduced, and not overborne by the positive testimony: *Held*, that the specifications were sustained, and discharge refused: *Re Goodridge*, So. Dist. N. Y., 2 B. R. 105.

Fraudulent Debt.—A fraudulent debt must be one made with a view to give a preference. Payment of attorney's fees is not such a preference as will prevent discharge of bankrupt: *Re Sidle*, So. Dist. Ohio, 2 B. R. 77.

Fraudulent Preference.—An assignment of a claim to secure a pre-existing indebtedness made when the bankrupt was insolvent, and not as a pledge of security, made at the time the indebtedness was contracted and as a part of the transaction, is a fraudulent preference and a good ground for refusing a discharge: *Re Foster*, So. Dist. N. Y., 2 B. R. 81.

Where a person subject to the bankrupt law, being insolvent, and knowing himself to be such, but not contemplating bankruptcy, pays one creditor in full, there is no conclusive presumption that he has given a fraudulent preference within the meaning of section 29 of the Bankrupt Act, so as to prevent his discharge, although such payment may be an act of bankruptcy within the meaning of section 39 of the act: *Re Locke*, Dist. of Massachusetts, 2 B. R. 123.

Section 29 refuses a discharge on the ground of preference only when the act is brought within the definition of section 35, or of section 29 itself. Under the latter, it must be proved that bankruptcy was in contemplation, and under the former that the creditor was a party to the fraud: *Id.*

Assignment for benefit of Creditors in contemplation of Bankruptcy.—Where it appeared solely from the testimony of bankrupt that he had made a general assignment for benefit of creditors, and filed an application in bankruptcy on the fourth succeeding day: *Held*, that a bare denial of the bankrupt is insufficient to show that such transfer was not made in contemplation of bankruptcy. Application for a discharge denied: *Re Brodhead*, East. Dist. N. Y., 2 B. R. 93.

Books of Account of Merchant.—The provision that no discharge shall be granted, if the bankrupt, being a merchant or tradesman, has not subsequently to the passage of the act kept proper books of account, applies, whether the omission to keep them has been with fraudulent intent or not: *Re Solomon*, East. Dist. Pa., 2 B. R. 94.

It is not necessary that the omission of a bankrupt to keep proper books of account should be wilful in order to prevent a discharge. The intent of non-keeping of books is immaterial: *Re Newman*, So. Dist. N. Y., 2 B. R. 99.

What are proper books of account in any case must be determined by the facts and circumstances of the particular case: *Id.*

Vague Specifications of Fraud.—Vague and general specifications, reciting fraud, &c., will not be allowed in opposition to discharge: *Re Tyrrel*, So. Dist. N. Y., 2 B. R. 73; *Re Hansen*, *Id.* 75; *Re Dreyer*, *Id.* 76.

Fraudulent Debt.—Opposition to discharge, grounded upon the fact of debt being fraudulently created, is insufficient: *Re Doody*, So. Dist. N. Y., 2 B. R. 74.

Debt created while in Fiduciary Character.—On a specification in opposition to a discharge setting forth that a debt due by bankrupts was created while they were acting in a fiduciary character: *Held,* that the fact was no ground for withholding discharge: *Re Tracy and others,* So. Dist. N. Y., 2 B. R. 98.

Filing of Specification in Time.—A creditor as assignee of a note of the bankrupt secured by a deed of trust on land, cannot come in and oppose discharge of the bankrupt unless he shall have entered his opposition and filed his specifications within the proper time and according to rule: *Re Mc Vey,* Dist. of Mississippi, 2 B. R. 85.

Specifications in Opposition filed nunc pro tunc.—In a proper case, where the omission to file specifications in opposition to the discharge within ten days after the return day to show cause was inadvertent, creditors may file same with permission, *nunc pro tunc: Re Grefe,* So. Dist. N. Y., 2 B. R. 106.

Creditors who have not proved.—Creditors who have not proved their debts can oppose discharge of bankrupt: *Re Boutelle;* Dist. of N. H., 2 B. R. 51.

Certificate of Register as to Bankrupt's Oath.—The register is to certify conformity, or non-conformity on presentation to him by the bankrupt of the oath required by section 29, and where there be specifications in opposition to the discharge, the register may certify conformity except in the particulars covered by the specifications: *Re Pulver,* So. Dist. N. Y., 2 B. R. 101.

VII. Rights and Duties of Assignee.

Choice of.—Where an assignee is chosen by the greater part in value and number of the creditors who have proved their claims, and there is no imputation either upon his capacity or integrity, he is assigned by virtue of law, and the judge is not competent to interfere. *Re Grant,* Dist. of So. Car., 2 B. R. 35.

Should not solicit Votes for his Appointment.—The court will not sanction the solicitation of votes of creditors by persons seeking thereby to be chosen assignees: *Re* ——— ———, So. Dist. N. Y., 2 B. R. 100.

Conveyance by Register to Assignee.—Register has the right to convey the estate to the assignee when there is "no opposing interest," although the title to the property is in dispute: *In re Wylie,* Dist. of Maryland, 2 B. R. 53.

Suit for Property fraudulently disposed of by Bankrupt.—Property fraudulently disposed of by bankrupt in proceedings by or against him may be recovered by the assignee upon petition in the Bankruptcy Court, proceedings upon which may be of a summary character.

The district judge may order issues of fact arising in such cases to be tried by a jury.

Suits may be brought at common law, or by bill in equity, for the recovery of property in such cases, but as they must be governed by technical rules, and be subject to the delays incident thereto, it is preferable to proceed by summary proceedings in the Court of Bankruptcy,

that being a cheaper, speedier, and more simple mode: *Neall* v. *Beckwith and others*, Nor. Dist. Ohio, 2 B. R. 82.

Suit for Property conveyed by Bankrupt within four months.—In an action of trover brought by an assignee in bankruptcy against a creditor to recover the value of certain property transferred by the bankrupt to the creditor within four months preceding the adjudication of bankruptcy, it not being shown that a preference of creditors, or a fraud on the act, was thereby intended. *Held*, that the assignee could not recover: *Wadsworth* v. *Tyler*, Dist. of Connecticut, 2 B. R. 101.

Suit to recover Payments made to Mortgage-Creditor.—A chattel-mortgage of a stock of goods executed by one copartner under seal, and assented to by the other partner by parol, is valid, and is not invalidated by the fact that such mortgages are not required by law to be under seal: *Hawkins* v. *Bank*, Dist. of Minnesota, 2 B. R. 108.

Where mortgagors in such a mortgage had stipulated to retain possession of goods to sell and dispose of them as agents of the mortgagee, a national bank: *Held*, in an action brought by the assignee in bankruptcy to set the mortgage aside and recover the amount of deposits made by the mortgagor with the mortgagee, that the mortgage-debt would be extinguished by sales and deposits with the mortgagee, by the mortgagors in possession, and no recovery could be had: *Id.*

VIII. Proof of Debt.

Creditor, with Security.—A creditor of a bankrupt holding the security of a deed of trust in the nature of a mortgage, with a power of sale in a third party as trustee, must prove his debt as a creditor holding a security, and obtain the permission of the court to have the security sold. If he direct a sale without this permission, the court, upon application of the assignee, will set aside the sale: *Re Bittel and Others*, East. Dist. Mo., 2 B. R. 125.

If the trustee sell without the authority of the court, whether any title pass to the purchaser, *quære: Id.*

Fraudulent Debt.—A debt created by fraud is provable. Where amount due to a creditor is in dispute in a state court, the Court of Bankruptcy may allow the suit to proceed: *Re Rundle and Jones*, So. Dist. N. Y., 2 B. R. 49.

Judgment for Breach of Promise of Marriage.—A judgment obtained on breach of promise to marry is a debt provable in bankruptcy and is barred by discharge. Concealment to oppose discharge of bankrupt must be wilful: *Re Sidle*, So. Dist. Ohio, 2 B. R. 77.

Judgment after Adjudication.—A judgment extinguishes the debt upon which it was founded and constitutes a new debt. A judgment obtained after an adjudication of bankruptcy is not provable against estate of bankrupt: *Re Williams*, Dist. of Connecticut, 2 B. R. 79.

Action to Recover may be stayed.—An action to recover a provable debt is to be stayed until a determination is had as to the discharge, whether the debt be one that will be discharged or one that will not: *Re Rosenberg*, So. Dist. N. Y., 2 B. R. 81.

IX. Distribution.

Jurisdiction of State Courts.—The distribution of the assets of a bankrupt cannot be interfered with by process of state court. Money awarded under a rule of court cannot be attached: *Re Bridgman*, So. Dist. Georgia, 2 B. R. 84.

Partnership Debts.—A creditor, the obligee of a joint and several bond given by the members of a copartnership, is entitled to dividends out of the several assets of the individual bankrupts, members of the firm, the firm and its several members having been adjudicated bankrupt: *Re Bigelow and Others*, So. Dist. N. Y., 2 B. R. 121.

X. Costs.

Bankrupt as Witness.—A bankrupt summoned by creditor to appear as witness is not entitled to witness fees: *Re McNair*, Dist. Nor. Car., 2 B. R. 77.

The party for whom services are performed by the officers of the court must pay the fees incident to such services. A creditor is only bound to pay expenses of his own examination. Bankrupt making further statements after creditor's examination is closed, must pay his own expenses: *Re Mealy*, Nor. Dist. N. Y., 2 B. R. 51.

United States Marshal as Messenger.—Travel by a United States marshal as messenger to make return on warrant of bankruptcy is necessary, and mileage of five cents per mile therefor is a proper charge.

A charge by marshal of ten cents per folio for preparing notices to creditors is an improper charge.

An item for attendance is an improper charge: *Re Talbot*, So. Dist. Georgia, 2 B. R. 93.

XI. Register.

Powers of.—A register has power to fill up blank, issue summons, &c., the same as judge. The register has no right to summon witnesses for the purpose of eliciting the facts on which to base an exception. A register has the power to call bankrupt before him to answer matters touching property, his discharge, &c. A register may proceed the same as the judge when there is no controversy: *Re Brandt*, Dist. of Nor. Car., 2 B. R. 76.

Power to order Payment of Fees.—The register has power to order the payment of fees and expenses incurred in a case out of assets in the hand of the assignee, on application of the attorney for the bankrupt: *Re Lane*, So. Dist. N. Y., 2 B. R. 100.

Control over Proceedings.—In questions of postponement, and of cases of adjournments before registers, they must exercise proper legal discretion. Subject to this rule, they have entire legal control of cases before them, and must exercise their best judgment in preventing unnecessary and unreasonable delays: *Re Hyman*, So. Dist. N. Y., 2 B. R. 107.